IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Civil Revision Application No.l58 of 2005
with
Civil Application no. 92 of 2005

M/s Sahyog Builders .... applicants
vs
Sahyog Complex Coop HS Ltd & anr ..Respondents

Mr. G.R.Rege with Nitin Raut for applicants
Mr A G Damle for respondent no.l

CORAM: A.M KHANWILKAR J.

Dated l6.l.2006

P.C:

l. Heard the learned counsel for the parties.

2. I see no reason to depart from the conclusion arrived by the court below. The suit in question being one based solely on an agreement of sale for enforcement of obligation of the defendant-builder with reference to the provisions of the Maharashtra Ownership Flats,(Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, l963, same would be governed by section 6(iv)(j) of the Bombay Court Fees Act for the purpose of monetary valuation. The respondent has rightly relied on the decision of this Court in the case of Vrindavan (Borivli) Coop Housing Society Ltd vs.

Karmarkar Bros and ors, reported in l982 Mah L J 607, which answers the issue against the applicants.

3. Mr.Rege, however submitts that the suit as filed is under the provisions of the Specific Reliefs Act by which conveyance is claimed, which is beyond the scope of declaration required to be given in terms of section ll of the Act of l963. Reliance was placed on the prayer clause (c) by Mr.Rege to contend that the suit is for specific performance of the conveyance which cannot be entertained by the Civil Judge, Junior Division as he has no pecuniary jurisdiction. As mentioned earlier, the suit filed by the respondent-plaintiff is essentially for declaration with reference to the agreement of sale Exh B/l and for enforcement of the obligations by the defendant-builder. In such a suit even if a relief of conveyance is sought for, as could be seen from the prayer clause (c), even so the civil court will have the jurisdiction to decide on prayers which are covered by the provisions of the Act of l963. Relief of conveyance which will be incidental to the relief which will follow on the declaration under section ll of the Act of l963 is to be granted. In other words at the end the trial court will have to mould

the relief in conformity with the scope of the provisions of section ll of the Act of l963. Viewed in this perspective no interference is warranted in the revisional jurisdiction. Revision is dismissed.

. In view of the disposal of the main revision application, no orders on civil application.